IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8684 of 2000
With
SPECIAL CIVIL APPLICATION No. 8737 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT DEVELOPMENT OFFICER & 1 - Petitioner(s)
Versus
KARSANBHAI RAMJIBHAI JALADIYA - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR NR SHAHANI for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/08/2007

COMMON ORAL JUDGMENT

1. The petitioners-District Development Officer and Panchayat Irrigation Division, through

Executive Engineer, are before this Court with a submission that the award dated 12.1.2000 passed by the Labour Court, Junagadh in Reference [LCA] 219/95 and 220/95 [challenged in these two writ applications] is bad and illegal.

2. The short facts necessary for disposal of the present writ applications are that each of the respondents-workmen was employed as daily rated/daily wager as work-charged employees, meaning thereby that salary was to be charged against the work. It appears that somewhere in June, 1985, the present petitioners stopped awarding any work to each of the respondents. Thereafter, vide order dated 17.1.86, an order of appointment was made which was continued in case of Shri Khimabhai Muljibhai Mahida up to 22.3.86 and in case of Karsanbhai Rambhai Jiladiya up to 28.3.86. It again appears that on 7.3.86, services of the workmen were transferred to the District Development Officer. It is not in dispute before me that on 17.1.86, each of the respondents was appointed under the scarcity work. Vide order dated 9.4.86, the work period

were extended up to 22.6.86 and 27.6.86. It appears that thereafter vide order dated 23.6.86, each of the respondents was removed from the services. Being aggrieved by the said removal, two separate References were made but as the orders were common, both the References were disposed of by a common order/award.

3. The Court below, vide its award directed reinstatement with full back wages, therefore, the petitioners are before this Court.

4. Shri H.S.Munshaw, learned counsel for the petitioners submitted that straight case of the workmen was that their removal with effect from 23.6.86 was patently illegal and as they were falling in the definition of “workman” and that the removal was contrary to Sections 25G and 25H of the Industrial Disputes Act, 1947, they were entitled to be reinstated. According to Shri Munshaw, the respondents never came to the Court with a submission that their removal on 27.6.85 was illegal. According to him, when a party comes to the Court with a specific case, then, that specific case only is to be considered. He

submits that if the respondents had come to the Court with a case that their removal with effect from 23.6.86 was illegal, then, the respondents were required to prove before the Court that the Industrial Disputes Act was applicable, they had worked for 240 days in 12 calendar months preceding the date of the retrenchment and that there was violation of Section 25G of the Act. According to him, a Full Bench of this Court in the matter of *H.K. Makwana vs. State of Gujarat and others [1994 [2] GLR 1002*, has observed that relief work undertaken by the State during drought, famine etc. for providing employment to the needy would not be industry but would come under the sovereign function of the State. He submits that the Court below could not direct reinstatement of the daily wager with full back wages.

5. Shri N.R. Sahani, learned counsel for each of the respondents, however, submitted that from the records it would clearly appear that the workmen were employed in April,1981 and they were continued up to June, 1986. He submits that

subsequent to June,1986, work was not awarded or thereafter, the respondents were not re-employed in the scarcity work, then, the Court should look into the earlier work and should hold that non-grant of the work from June, 1985 would amount to illegal removal.

6. Shri Sahani also submitted that the judgment in the matter of H.K. Makwana needs reconsideration by a larger Bench as it runs contrary to the basic concept enshrined under Articles 14 and 16 of the Constitution of India and even runs contrary to other judgments of the Supreme Court.

7. So far as the question of referring the matter to the larger Bench is concerned, I must show my inability in conceding to the request made by the learned counsel for the respondents. When a Full Bench of a particular Court records a particular finding after considering the entire law on a particular subject, then, the learned Single Judge, ordinarily would not be entitled to refer the matter for further opinion to a larger Bench. A learned Single Judge would be

entitled to refer the matter to the larger Bench if on the very same subject there is a conflict in the view in the parallel Benches or some judgment of the Supreme Court takes a view different than what had been taken by the larger Bench. It would be judicial indiscipline in making a Reference to a larger Bench simply on the ground that for no good reason, the learned Single Judge feels that the matter should be referred to a larger Bench. When the Full Bench records its opinion on a question of law, that opinion would bind the entire State, litigants, lawyers and even Judges of the same Court unless one or other Judges feel that the view requires reconsideration in view of the change in the law, or subsequent judgment of the very same Court or judgment of the Apex Court.

8. In the matter of H.K. Makwana, the High Court very specifically observed that the judgment in the matter of J.J. Shrimali [1989 [1] GLR 396] does not call for reconsideration. The Court opined that the employment offered to the

persons on the scarcity relief works as undertaken by the State cannot be said to be employment in 'Industry' as defined by Section 2[j] of the Industrial Disputes Act, 1947. The Court also observed that it is the primary and inalienable function of the State to provide livelihood to the persons who are affected by the natural calamities such as famine, earthquake, epidemic, flood, scarcity, etc and; admittedly, the relief work is not a 'business' or 'trade' and with regard to the 'undertaking', the activity is not analogous to trade or business or that it is not a systematic activity but is carried out casually at different places depending on the calamities in a particular area. In view of the said judgment of the Full Bench of this Court, I must hold that appointment of each of the respondents cannot be taken to be an appointment in industry as defined under Section 2[j] of the Industrial Disputes Act, 1947. It was contended by Shri Sahani that in case, Section 25F does not apply, then too, independent of Section 25F, provisions

of Sections 25G and 25H are required to be observed. He has placed his strong reliance on the judgments of the Apex Court in the matter of *Central Bank of India v. Satyam [JT 1996 [9] SC 181], Samishta Dube v. City Board, Etawah & Anr. [JT 1999 [2] SC 37 and Regional Manager, SBI v. Rakesh Kumar Tewari [JT 2006 [1] SC 252]*. The argument raised by Shri Sahani could certainly assume importance if the provisions of the Industrial Disputes Act were held applicable. Once it is held that the Industrial Disputes Act does not apply, then, the provisions of the Industrial Disputes Act, which protect a workman under the provisions of Section 25F or under Chapter V-A of the Act would also not provide any protective umbrella to such removed or retrenched or terminated employee.

9. Shri Sahani then contended that as each of the respondents was appointed in the year 1981 and worked up to June 1985 when they were discontinued, then, the Court should look into the facts that prior to June, 1985 the workmen had worked for 240 days in 12 calendar months

preceding the date of retrenchment/removal. According to him, on the basis of their work prior to June, 1985, the respondents are entitled to reinstatement, specially when it has come on the records that the persons who are appointed subsequent to the appointment of the petitioners have been retained.

10. The argument of Shri Sahani, certainly could be considered by this Court if Reference was made on the ground that removal of the respondents in June, 1985 was bad and was contrary to the provisions of Sections 25F, 25G and/or 25H. If the respondent workmen had come to the Court with a case that their removal in June, 1986 was bad and indulgence of all the parties was craved to that point only, then, in a petition filed by the employer, respondent workman cannot be allowed to change his stand and stance. The parties are bound by their pleadings and they cannot be allowed to take a stand different than what they had taken before the Court below.

11. Taking into consideration the totality of the circumstances, I hold that the Court below was

unjustified in making the award in favour of each of the workmen.

12. At this stage, I must issue a word of caution to the Labour Courts that in cases of daily wagers, there is nothing like regular reinstatement, because, a daily wager is not regular workman or employee, his reinstatement would only be inclusion of his name in the list required to be maintained under Section 25G read with Central Rule 77 or the State Rule 78/82. A daily wager even when he continues to be in the employment does not get work like a regular employee, therefore, his reinstatement as regular employee would be absolutely illegal. If a daily wager does not get wages for the whole month, then, the full back wages cannot be awarded in favour of such workman. In such cases, the Labour Court would be required to look into the nature and character of the work assigned to such workman and also will have to take out average of the days for which he was employed in a month. If the award on merits is allowed to stand and the reasonings adopted by

the learned Labour Court are held proper, it would lead to chaotic situation, because, on one side such person would be reinstated and contrary to his legal rights, would get full back wages.

13. The petitions are allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

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